In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 681

JAMES A. ROBINSON, DECEASED, BY BESSIE L. TALLIAFERRO ROBINSON, AND MYRRH E. MARTIN SNELL, ET AL., AND THEIR HEIRS, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The order of the Court of Claims granting the government's motion for summary judgment (Pet. App. 31–32) is unreported.

JURISDICTION

The judgment of the Court of Claims was entered on April 5, 1965 (Pet. App. 31–32), and petitioners' motion for rehearing was denied on June 11, 1965 (Pet. App. 32). On October 11, 1965, the Chief Justice extended the time for filing a petition for a writ of certiorari to October 20, 1965, and the petition was

206-177—66

filed on that date.[1] The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

QUESTION PRESENTED

Whether the Court of Claims correctly held that petitioners' Indian claims were outside the court's jurisdiction and/or barred by the statute of limitations.

STATEMENT

After the Civil War, the United States entered into a treaty with the Cherokee Nation whereby the latter agreed that former slaves who met certain requirements should "have all the rights of native Cherokees." Treaty of July 19, 1866, 14 Stat. 799, 801. Subsequent congressional enactments prescribed criteria and procedures for establishing an official roll of the Cherokee Nation. A series of tentative rolls were compiled and, in some instances, "certificates of allotment" of lands were issued, to become effective if and when the allottee was included on the final roll. Some individuals were included on the initial rolls, but excluded either on subsequent interim rolls or on the final roll, which was required to be completed by March 4, 1907. Act of April 26, 1906, 34 Stat. 137, 138. Trustees of the Cherokee Freedmen, representing all freedmen and their descendants, challenged the striking or exclusion of certain freedmen from the various tentative rolls and the final roll. Protracted litigation ensued, culminating in this Court's decisions

[1] A motion for leave to supplement the petition was filed, and the proposed supplemental petition lodged with the Court, on December 16, 1965. The United States does not oppose the granting of the motion to supplement the petition.

in *Lowe* v. *Fisher*, 223 U.S. 95, and *Cherokee Nation* v. *Whitmire*, 223 U.S. 108, where it was held that the Secretary was not bound by any of the interim rolls and had correctly applied the statutory standards in establishing the final roll.

Petitioners claim to be descendants of Cherokee freedmen who were excluded from the final roll. They instituted the present suit in the Court of Claims against the United States, contending that they were entitled to the benefits of the Treaty of 1866 and seeking an accounting, restoration of lands, damages, and interest (Pet. App. 19–31). The Court of Claims granted a motion by the United States for summary judgment on the ground that petitioners' claims were time-barred and/or outside the Court of Claims' jurisdiction (Pet. App. 31–32).

ARGUMENT

The decision below is clearly correct, and the issues are neither recurring in nature nor of general importance in the administration of Indian affairs. Review by this Court is not warranted.

The Court of Claims' jurisdiction of tribal claims is expressly limited to those arising after August 13, 1946 (the date of the enactment of the Indian Claims Commission Act, 60 Stat. 1049, 25 U.S.C. 70–70w). See 28 U.S.C. 1505. Hence, if, as they assert (Pet. 3), petitioners constitute a "tribe, band or other identifiable group of American Indians," the Court of Claims lacked jurisdiction here; for petitioners' claims arose in the early 1900's, when they, or their ancestors, were excluded from the rolls of the Cherokee Nation.

Petitioners also assert that they "make their claims as individuals" (Pet. 4, 14; Pet. App. 19). But in that event, as the Court of Claims held, their claims under the Act of October 1, 1890, 26 Stat. 636, are barred by the 12-month statute of limitations in Section 3 of that Act. Similarly, any claims asserted under 28 U.S.C. 1491 (the Tucker Act) are barred by the six-year period of limitation provided in 28 U.S.C. 2501.[2]

Petitioners' claim to share in the 1961 award of the Indian Claims Commission to the Cherokee Nation is barred by the Act of October 9, 1962, 76 Stat. 776, since Congress there directed that the award be paid only to those Cherokees who were on the rolls at the time they were closed on March 4, 1907.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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FEBRUARY 1966.

[2] Furthermore, petitioners' claims appear barred by *res judicata*, in view of the litigation culminating in *Cherokee Nation* v. *Whitmire*, 223 U.S. 108.

U.S. GOVERNMENT PRINTING OFFICE: 1966